PETITION NOT PRINTED

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

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No. 553

JOSEPH ADAMOWSKI,
Petitioner, and Petitioner below,

vs.

HONORABLE GUY K. BARD, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, AND SAMUEL M. BLUMBERG, JR., *Respondents*

JAMES E. JACKSON,
Petitioner, and Petitioner below,

vs.

HONORABLE GUY K. BARD, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, AND EVERETT G. RODEBAUGH, *Respondents*

DELAY R. GRAHAM,
Petitioner, and Appellant below,

vs.

EPHRAIM H. HOMAN AND EDWARD BOSTA,
Respondents, and Appellees below

BRIEF OF RESPONDENTS, BLUMBERG, RODEBAUGH, HOMAN AND BOSTA, IN OPPOSITION TO PETITION FOR CERTIORARI AND APPENDIX.

THOMAS E. BYRNE, JR.,
Counsel for Respondents, Blumberg, Rodebaugh, Homan and Bosta.

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BRIEF OF RESPONDENTS, BLUMBERG, RODEBAUGH, HOMAN AND BOSTA, IN OPPOSITION TO PETITION FOR CERTIORARI AND APPENDIX.

Statement of the Case

The three petitioners are unsuccessful litigants who first brought suits against their respective employers under the

Jones Act, 46 U.S.C.A. 688.[1] After judgments were returned against them in the United States District Court, each filed an appeal to the United States Court of Appeals for the Third Circuit.

In order that they might present a written record to the Court of Appeals, each petitioner, by his counsel (all three petitioners are and have been represented by the same attorneys) wrote to the Court Reporter who had made a stenographic record of the proceedings in the District Court and requested the Reporter to transcribe to typewriting his shorthand notes. Each petitioner refused to pay, or to agree to pay, the Reporter and made his demand upon the Reporters, the respondents here, as a matter of absolute right.

The petitioners obtained orders staying proceedings in their original appeals and commenced actions against the Court Reporters in the District Court. These actions were in the nature of proceedings in mandamus against the Court Reporters. The District Court was asked to enter an order upon the Court Reporters directing them to comply with the request of petitioners' counsel.

The respondents here, defendants in the mandamus suit in the District Court, moved to dismiss the complaints upon the ground that they did not state causes of action (F.R.C.P. 12(c)).

The mandamus actions by Adamowski and Jackson were briefed and argued before Honorable Guy K. Bard. Judge Bard, without opinion, granted the Court Reporters' motions to dismiss upon the ground that the complaints failed to state a cause of action upon which relief could be granted.

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[1] *Adamowski* v. *Gulf Oil Corporation,* 93 F. Supp. 115; *Jackson* v. *Southern Steamship Company,* Civil Action No. 7515, E.D. of Pa.; *Graham* v. *Alcoa Steamship Company,* Civil Action No. 8770, E.D. of Pa.

Adamowski and Jackson then filed separate petitions in the nature of mandamus in the United States Court of Appeals for the Third Circuit. In each the Court Reporters *and* Judge Bard were named as respondents.

The third case,[2] Graham, was heard by Judge Allan K. Grim, and after Judge Grim followed Judge Bard's earlier holding, the plaintiff proceeded by way of an appeal.

In the Court of Appeals the two original mandamus actions by Adamowski and Jackson were consolidated and heard with the appeal in the *Graham* case. That Court, in an opinion by Chief Judge Biggs, dismissed the Rules to Show Cause in the mandamus actions and affirmed the judgment of the District Court in the *Graham* case. The present petition followed.

ARGUMENT

These cases are clearly ones in which the two Courts below have reached the only proper decisions possible and they do not merit review by this Court.

The Two Court Rule

Two Judges of the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit have held that the right which the petitioners assert is created by 28 U. S. C. A. 1916 does not exist. While the District Court did not write an opinion the Court of Appeals set forth its reasons in full. The opinion of the Court below amply demonstrates the correctness of the Court's decision.

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[2] There are a number of other cases pending in which similar procedures have been initiated. Proceedings in those cases await a final determination of the instant cases. We understand that a number of similar cases are pending or contemplated in other districts.

There Is No Conflict Between the Court Below and Any Other Court

Petitioners' brief seeks to infer, without actually so stating, that there is conflict between the decision of the Court below and three decisions by the Court of Appeals for the Ninth Circuit. *Oswald* v. *United States*, 96 F. 2nd 10; *United States* v. *Metzger*, 133 F. 2nd 82; *United States* v. *Oswald*, 141 F. 2nd 921.

There is no conflict. The petitioners here assert that because they are seamen they have an unqualified and absolute right to compel the Court Reporters to furnish them with a typewritten record of the proceedings at trial by virtue of the fact that 28 U. S. C. A. 1916 provides:

> "In all courts of the United States, seamen may institute and prosecute suits and appeals in their own names and for their own benefit for wages or salvage or the enforcement of laws enacted for their health or safety without prepaying fees or costs or furnishing security therefor."

What Congress provided, in § 1916, was that seamen would not be required to pay those costs which were by law payable into the Treasury of the United States under 28 U. S. C. A. 751(e).[3]

In the *Oswald* and *Metzger* cases, *supra*, the statute under consideration was the Territories Act, 46 U. S. C. A. 644, and the question was the right of an employee of the United States to collect fees from the United States in addition to his official salary.

Therefore, the questions in those cases were not in any way similar to the question which was decided by the Court

[3] "The clerk of each district court shall pay into the Treasury all fees, costs and other moneys collected by him, except naturalization fees listed in section 742 of Title 8 and uncollected fees not required by Act of Congress to be prepaid." 28 U.S.C.A. 751(e).

of Appeals in our case. An interpretation of 28 U. S. C. A. 1916 and the present 28 U. S. C. A. 753 was neither urged nor decided in the *Oswald* and *Metzger* cases, *supra.*

Likewise, the decision below does not conflict with, but rather follows, this Court's decision in *Miller* v. *United States,* 317 U. S. 192, 601.

In the *Miller* case, decided in 1942, this Court said:

> "There is no law of the United States creating the position of official court stenographer and *none requiring the stenographic report of any case, civil or criminal,* and there is none providing for payments for the services of a stenographer in reporting judicial proceedings." (Emphasis ours.) 317 U. S. 192 @ 197.

If there was not, in 1942, any law of the United States requiring the stenographic report of any case, then certainly there is nothing in 28 U. S. C. A. 753 which aids the petitioners. And this is so particularly in view of the fact that 28 U. S. C. A. 1916 had been in effect for many years at the time this Court decided the *Miller* case.

The Interpretation Which Petitioners Here Urge Is Inconsistent With Other Sections of the Same Act

Section 753 of Title 28 creates the office of court reporter, outlines his duties and provides for his compensation. In unmistakable language it refers to transcripts of testimony and casts upon the reporter the duty to provide a transcript to a party who requests the same and "has agreed to pay the fee therefor". 28 U. S. C. A. 753(b).

The same section grants the reporter the right to "charge and collect fees for transcripts requested by the parties, including the United States at rates prescribed . . .". The same section gives the reporter the right to "require any person requesting a transcript to prepay the estimated fee in advance . . .".

In 28 U. S. C. A. 1915 Congress gave certain litigants meeting certain requirements the right to proceed in forma pauperis. Among the conditions were that the person had to be a citizen of the United States and to make and file an affidavit of his inability to pay. Congress restricted the class further when it provided that the right to proceed in forma pauperis could be taken away if the Trial Judge certified that the appeal was not taken in good faith. 28 U. S. C. A. 1915(a). Of course any seaman meeting the requirements of the "forma pauperis" section would be entitled to a transcript for which the United States would pay the reporter.

In the present case, however, the petitioners have refused to make their request under the forma pauperis section. They as seamen assert as a matter of right what Congress granted poor persons as a matter of grace.

The forma pauperis section provides a method for remunerating the court reporter who, pursuant to its terms, is called upon to transcribe his shorthand notes and furnish a copy of the typewritten transcript to the party proceeding in forma pauperis. There is a further section (1915(e)) for the taxation of costs in favor of the United States where the party who has proceeded in forma pauperis recovers his taxable costs.

The interpretation of § 1916 which these petitioners urge would read out of the Code all of these provisions for compensation to the reporter and safeguards against abuse which Congress obviously intended. It would lead to an absurd and inequitable result. One of the rules of statutory construction is that the language of a statute "may and should be limited where the literal application of the statute would lead to extreme or absurd results, and where the legislative purpose gathered from the whole act would be satisfied by a more limited interpretation". *United States* v. *Katz,* 271 U. S. 354 at 362.

We suggest that §§ 751, 753, 1915 and 1916 can and should be read in pari materia. The decision below achieves that result when it says that the provisions of § 1916 are intended to apply to the fees which are payable to the Treasurer of the United States under 28 U. S. C. A. 751(e).

Rights granted the Court Reporters by clear statutory language should not be taken away by a strained construction of §1916. As the Court below points out it was not until 1944 that there were official Court Reporters. Section 1916, the section granting seamen the right to proceed without prepayment of costs was in effect for many years prior to 1944. Therefore, up until 1944 the right which these petitioners now claim as an absolute one could not have existed. They assert that the Court Reporters Act, now codified as 28 U.S.C.A. 753 gave them the right to demand a free transcript and that the right is in no way controlled, or curtailed to the pertinent portions of a proceeding.[4]

We submit that there is nothing in §753 which lends any color to this argument. In pertinent part the reporter must "upon the request of any party to any proceeding which has been so recorded *who has agreed to pay the fee therefor*, . . . , the reporter shall promptly transcribe . . .". (743(b)) (emphasis ours).

> "Each reporter may charge and collect fees for transcripts requested by the parties including the United States at rates prescribed by the court subject to the approval of the Judicial Conference" (753(f)).

It is difficult to see how congressional intent could be clearer. For a transcript payment was to be made. Con-

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[4] Cast as it is in terms of an absolute right, the petitioners' argument would grant the seaman the right to demand that the court reporters furnish a stenographic transcript of the pertinent as well as the impertinent portions of the Record. Presumably it would even require the reporter to transcribe counsels' jury speeches if requested.

trol of the reporter's income was assigned to the Judicial Conference through the power to set the rates.

The contention which the petitioners urge would result in gross inequities because it would require the reporters in certain districts where seamen's litigation comprises a large portion of the court's calendar [5] to transcribe these records without compensation. Thus a rate set by the Judicial Conference would be fair for a reporter in the Middle District of Pennsylvania where almost no seamen's litigation is tried. It would not be fair for a reporter in the Eastern District of Pennsylvania where seamen's litigation represents a large percentage of all of the cases brought to trial.

Under the existing framework of the statute it would be impossible for even the Judicial Conference to adjust fairly the incomes of reporters in "maritime" as opposed to non-maritime cities.

Conclusion

The provisions of §753 are controlling. The decision of the Court below was eminently correct.[6] There is no conflict, and the result which the petitioners urge upon this Court would result not only in gross inequities to the reporter but would manifestly not be in accord with the in-

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[5] Compare *United States* v. *Kirkpatrick*, 186 F. 2nd 393.

[6] We disagree with it only where it states: "It is conceded by the respondents that Adamowski is a seaman and that his suit in the court below falls within the purview of Section 1916 as to the prepayment of all fees or court costs *save only transcript fees*".

We did not intend to so concede, for obviously other "costs", separate and apart from the reporters' charge, do not come within the purview of § 1916. For example, fees to witnesses, mileage, exemplifications from a state court, and many others do not because not payable into the Treasury of the United States under 28 U.S.C.A. 751(e). We do concede that all fees payable to the Treasury are encompassed within § 1916. We think that Congress could not have waived fees payable to anyone other than the United States.

tention of Congress. The Court below is correct in holding that "specific" language overrides "general" language, that §753 was not intended to be changed or amended by §1916.

As a concluding point we refer the Court to the interpretation placed upon the existing statutes by the Administrative Office of the United States Courts. Correspondence printed as an appendix to this brief demonstrates the interpretation placed upon the Act by the Administrative Office charged with the enforcement of it. Under familiar rules that interpretation is entitled to great weight and is in accord with the decision below.

The petitions should be denied.

THOMAS E. BYRNE, JR.,
Counsel for Respondents.

APPENDIX

SHORTHAND SERVICE BUREAU

Everett G. Rodebaugh

Court Reporters

Philadelphia, Pa.

November 30, 1950.

Honorable Henry P. Chandler,
Administrative Office of the U. S. Courts,
Supreme Court Building,
Washington 13, D. C.

DEAR MR. CHANDLER:

I have just been served with a copy of a complaint against me, under the caption of James E. Jackson v. Everett G. Rodebaugh, No. 11659, United States District Court for the Eastern District of Pennsylvania. This complaint is for relief in the nature of mandamus praying that:

> ". . . this Honorable Court enter an order directing defendant Everett G. Rodebaugh, Official Court Reporter of the United States District Court for the Eastern District of Pennsylvania, to transcribe and certify, in accordance with law, the stenographic record made by him as such reporter in the trial proceedings in the case of James E. Jackson against Southern Steamship Company, docketed in this Court as Civil Action No. 9386, and directing that he furnish a copy of said transcript to James E. Jackson, plaintiff in said Civil Action, without prepaying fees or costs or furnishing security therefor, pursuant to U. S. Judicial Code (28 U. S. C. A., Sec. 1916)."

I should appreciate knowing:

1. Whether transcript in a "seaman's case" may be furnished upon an order of court directing that payment be

made by the Government; or, in other words, whether such an order would be approved by your office.

2. Whether this is a matter which because of its application to all other federal court reporters should have the attention of your office.

With best regards,

Very truly yours,

EVERETT G. RODEBAUGH.

EGR:h.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

Supreme Court Building

Washington 13, D. C.

December 7, 1950.

Henry P. Chandler,
Director

Elmore Whitehurst,
Assistant Director

Honorable Philip L. Sullivan,
United States District Judge
United States Court House
Chicago 4, Illinois.

DEAR JUDGE SULLIVAN:

In connection with a request for authorization of payment for the preparation of an original transcript of proceedings in Case No. 47 C 1442, entitled Charles Mullen vs. Fitz Simons & Connell Dredge & Dock Co., a Corporation, we have received from Mr. Alfred H. Frederick, Official Court Reporter, a copy of your court order (copy enclosed) dated November 7, 1950 certifying that the appeal contemplated in this case raises a substantial question of law and is not frivolous and, further, that the plaintiff and petitioner is a seaman, and ordering that Mr. Frederick furnish the said Charles Mullen a transcript of the proceedings in said

cause, together with the instructions of the court to the jury, without cost to the said petitioner and plaintiff, and that this office pay Mr. Frederick for the transcript.

We know of no authority for payment by the Government of the cost of furnishing transcripts other than 28 U. S. C. 753 (f) and 28 U. S. C. 1915, both of which refer to in forma pauperis proceedings. It is our view, therefore, that unless a seaman is authorized by the court to proceed in forma pauperis and to be furnished transcript at Government expense, this office may not authorize payment for the transcript from appropriated funds.

If Charles Mullen has been authorized to appeal in forma pauperis or is so authorized now, and you will have a certified copy of the court order to that effect sent to this office, we shall be able to approve payment of $62.70 to Mr. Frederick. Otherwise, we regret to say that we do not see how we may authorize the expense.

With kind regards,

Sincerely yours,

LELAND L. TOLMAN,
Chief of Business Administration.

CC: Mr. Alfred H. Frederick, Official Court Reporter, United States District Court, 337 U. S. Courthouse, Chicago 4, Illinois.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Supreme Court Building

Washington 13, D. C.

December 7, 1950.

Henry P. Chandler, Director.
Elmore Whitehurst, Assistant Director.

Mr. Everett G. Rodebaugh,
Federal Court Reporter,
United States Court House,
Philadelphia 7, Pennsylvania.

DEAR MR. RODEBAUGH:

For Mr. Chandler I acknowledge receipt of your letter of November 30 inquiring regarding the furnishing of transcript in a "seaman's case".

In this connection I am enclosing a copy of a letter dated March 31, 1948 from Mr. Elmore Whitehurst, Assistant Director, to Mr. C. L. Craig, Official Court Reporter at Norfolk, Virginia, dealing with the subject of furnishing transcript in seamen's cases. The sections in Title 28 cited in the letter, of course, have been changed by the revision of that title as of September 1, 1948.

Sincerely yours,

(S.) V. A. CLEMENTS,
Chief Auditor.

Enclosure.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Supreme Court Building

Washington 13, D. C.

March 31, 1948.

Henry P. Chandler, Director.
Elmore Whitehurst, Ass't. Director.

Mr. C. L. Craig, Official Court Reporter,
United States District Court,
P. O. Box 1935,
Norfolk, Virginia.

DEAR MR. CRAIG:

I have your letter of March 29 and the enclosed form AO 19 requesting the authority of this office to incur at the expense of our appropriations, the cost of transcript of proceedings in the case of *Clyde Romulous Tarkenton* v. *United States,* Admiralty No. 7108, of the United States District Court for the Eastern District of Virginia, to be furnished to the libellant for purposes of appeal.

The order of the court which you enclose indicates that the appellant is a seaman and that the appeal is to be taken "without the necessity of furnishing a cost bond, or the pre-payment of costs, or the making of a deposit to secure fees or costs" pursuant to U. S. C. Title 28, Sec. 837 which provides for that procedure in actions by seamen "for wages of salvage and to enforce laws made for their health and safety." Before the enactment of the Court Reporting Act (U. S. C. Title 28, Sec. 9a), there was no provision by which the appellant in such a case could secure free transcripts in order to perfect his appeal. If such a right now exists, it must be by virtue of the Court Reporting Act. But the only provision in the Court Reporting Act that could possibly apply is in subdivision (c) where it is provided that "fees for transcripts furnished in criminal or habeas corpus proceedings to persons allowed to

sue, defend, or appeal *in forma pauperis* shall be paid by the United States out of money appropriated for that purpose; and the fees for transcripts furnished in other than criminal or habeas corpus proceedings to persons permitted to appeal *in forma pauperis* shall also be paid by the United States if the trial judge or a circuit judge shall certify that the appeal is not frivolous but presents a substantial question."

It seems to me clear that the words "*in forma pauperis*" appearing in the Court Reporting Act refer only to actions prosecuted pursuant to the statute (U. S. C. Title 28, Sec. 832-836), relating to suits by poor persons. If the appellant in the case to which you refer cares to take the oath of poverty, and the court will permit him to proceed as a poor person under that Act, we would be in a position to pay for the transcript to which you refer. Also, since this is a civil case, it would be necessary to comply with the provisions of the Court Reporting Act which require that a trial or circuit judge certify that the appeal is not frivolous but presents a substantial question.

If the appellant can bring himself within the terms of U. S. C. Title 28, Sec. 832, and you will forward the proper documents referred to in Administrative Office Bulletin #320, dated January 28, 1947, and directed to all court reporters, I shall be glad to give the matter further consideration.

With kind regards, I am

Sincerely yours,

(S.) ELMORE WHITEHURST,
Assistant Director.